



# *Town of Brookline*

## *Massachusetts*

**Department of Planning and  
Community Development**

Town Hall, 2<sup>nd</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2130 Fax (617) 730-2442  
TTY (617) 730-2327

**Jeffrey R. Levine, AICP**  
Director

**TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 060011**

Petitioner, Carl Kramer, Tr., applied to the Building Commissioner for permission to construct three new residential dwelling units in the basement converting the premises located at 9 Greenway Court from six units to nine units per plans. The application was denied and an appeal was taken to this Board.

On February 23, 2006, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and originally fixed March 30, 2006, at 7:00 p.m., as the time and place of a hearing on the appeal in the Selectmen's Hearing room on the sixth floor of the Town Hall. The hearing was continued and held instead on May 11, 2006, at 7:00 p.m. Notice of the scheduled hearing was mailed to the Petitioner, to his attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice

of the continued hearing was published April 20, 2006 and April 27, 2006, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

### **NOTICE OF HEARING**

**Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

Petitioner: Carl Kramer, Tr.

Location of Premises: 9 GREENWAY CT BRKL

Date of Hearing: 05/11/2006

Time of Hearing: 7:00 p.m.

Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup>. Floor**

A public hearing will be held for a variance and/or special permit from

1. 4:07; Table of Use Regulations; Use #6; Variance Required.
2. 5.05; Conversions; Special Permit Required.
3. 5.50; Front Yard Requirements; Variance Required.
4. 5.60; Side Yard Requirements; Variance Required.
5. 5.70; Rear Yard Requirements; Variance Required.
6. 6.01.2.a; General Regulations Applying to Required Off-Street Parking Facilities; Special Permit Required.
7. 6.02.1; Table of Off-Street Parking Space Requirements; Variance Required.
8. 8.02.1; Alteration or Extension; Special Permit Required.
9. 8.02.2; Alteration or Extension; Special Permit Required.
10. Board of Appeals Decision; Case #3528; dated December 22, 1999; Modification Required

Of the Zoning By-Law to construct three new residential dwelling units in the basement converting the premises from six units to nine units per plans

at 9 GREENWAY CT BRKL

Said Premise located in a M-2.0 district.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Diane R. Gordon  
Harry Miller  
Bailey Silbert**

**Publish:** April 20, 2006 and April 27, 2006.

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board members Harry Miller, Enid Starr, and Murray Schockett. Petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C.

At the hearing, Tim Greenhill, Planner of the Planning Department distributed the Planning Board Report dated April 27, 2006. Mr. Allen then described the factual background for the petition as follows:

Under Case No. 3528, the applicant was granted a Special Permit to expand the existing two car parking area into an adjacent lot for an additional nine spaces. A Special Permit was also granted to allow more than 25% of the spaces as compact spaces. The approval was granted subject to the provision of landscaping around the parking area.

9 Greenway Court is part of a larger courtyard apartment complex and contains six dwelling units. The property is located in a neighborhood which primarily consists of apartment buildings. Abutting the rear of the site is the Babcock Street public parking area, and across the street is the John Street public parking area. The site, located one block from Harvard Street, is in close proximity to the Coolidge Corner central business district and is in the Coolidge Corner IPOD.

The property was constructed in 1924 in a Georgian Revival style and is part of a larger group of five connected residential structures located around a central courtyard that fronts onto



Green Street. The main entrance to the building is via the courtyard although a secondary entrance is located at the rear of the building facing John Street.

The applicant is proposing to convert the basement into three separate units. The basement is currently used as storage space for the apartment and as the utility area. The basement would be accessed by the existing central stairwells. The three units to be created are Unit A – 1 bedroom unit (765.5 square feet), Unit B – 1 bedroom unit (608 square feet) and Unit C – studio unit (462 square feet). Three new window wells are proposed for each of the units. These will be in the same location as existing windows except for proposed Unit C in which they will be located at the northern end of the building so as not to block external parking space no. 1.

The zoning relief required is as follows:

**Section 3.03.6.1 – Coolidge Corner Interim Overlay District**

This project is located within the Coolidge Corner Overlay District. As the proposal is for three units, a **variance** under Section 3.03.6.1 will be required. The submittal is also subject to the provisions of the Coolidge Corner design guidelines.

**Section 4.07 – Table of Use Regulations: Use #6 (CCIPOD)**

**Section 5.05 – Conversions**

**Section 5.50 – Front Yard Requirements**

**Section 5.60 – Side Yard Requirements**

**Section 5.70 – Rear Yard Requirements**

**Section 6.01.2.a – Off Street Parking Regulations (Conversion Waiver)**

**Section 6.02.1 – Table of Off Street Parking (Number of Spaces)**

**Section 8.02.1 – Alteration of Extension**

A **special permit** is required to alter, extend or enlarge a non-conforming use.

**Section 8.02.2 – Alteration of Extension**

The use of the property is for more than five units. Therefore, as the property is subject to the Coolidge Corner Interim Overlay District, a use exceeding five units is not permitted under the CCIPOD. A **variance** will be required for this proposal.

	<b><u>Required/Allowed</u></b>	<b><u>Existing</u></b>	<b><u>Proposed</u></b>	<b><u>Finding</u></b>
Units	3-5 by SP	6	9 (3 new, 6 existing)	<u>Variance*</u>
Front Yard	15'	20.9'	20.9'	<u>Complies</u>
Side Yard	10' + L/10	0' (Existing Nonconforming)	0' (Existing Nonconforming)	<u>Special Permit**/ Variance</u>
Rear Yard	30'	0' (Existing Nonconforming)	0' (Existing Nonconforming)	<u>Special Permit**/ Variance</u>

Parking	19	11	11	<u>Special Permit***/</u> <u>Variance</u>
---------	----	----	----	--

- \* **Section 3.03.6.1** Coolidge Corner IPOD changed the use table to read that “a development of three to five units may be permitted by special permit as provided in Section 9.05 and Section 3.03.6.1.h.2.” The applicant is requesting an additional 3 units on the existing 6 for a total of 9 units and therefore requires a variance.
- \*\* Under **Section 5.05**, the Board of Appeals may waive dimensional requirements provided that no new nonconformity is increased.
- \*\*\* Under **Section 6.01.2.a**, the Board of Appeals may waive up to half of the parking requirements.

The Chairperson inquired if any members of the public wished to be heard in regard to the matter being heard by the Board. Two members of the public raised concerns regarding construction of new residential units, and stated their opinion that the Coolidge Corner IPOD was intended as a moratorium on any new construction until the study is completed.

Tim Greenhill, on behalf of the Planning Board, gave the following report:

The Planning Board does not support this request to convert a basement into three units at 9 Greenway Court and believes it requires a use variance. The site is located in the Coolidge Corner Interim Overlay Planning District, which is subject to a one year restriction on development greater than five (5) units, to allow a committee to review impacts from residential and commercial development in the area and propose new zoning and design review regulations. Residential projects of three to five units require a special permit. Since the resulting total number of units in this project will be nine, the Planning Board believes the criteria for a use variance must be met. The applicant interpreted the word “development” in the by-law as referring only to buildings seeking to increase (or “develop”) additional living space. The Planning Board feels that the word “development” refers to the resulting total number of living units; that ever building is a “development,” whether or not someone is presently seeking to increase its.

Further, these three additional units will generate greater parking needs for this building, and when the applicant requested relief in 1999 for more parking spaces, it was cited that the spaces were needed to relieve the parking burden for this building and the surrounding crowded Coolidge Corner / North Brookline Residential Area. The Board of Appeals at that time issued an approval noting that for this six unit residential building there ought to be a minimum of nine or



ten spaces under the Zoning Code. The construction of the three additional units would only increase this parking demand.

The Planning Board is also concerned with the creation of new window wells, which will result in the loss of some of the internal courtyard space and will impact the overall appearance of the building. This might also set a precedent for allowing other buildings on the courtyard to have basement units, and then the courtyard would be further impacted by window wells. Lastly, the proposed Unit C studio has as its main external view a parked car in the adjacent parking area.

Therefore, the Planning Board does not support the variance for conversion of the basement into an additional three units at this time.

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the various sections of the Zoning By-Law under which relief is needed. He noted that the proposal was just to build three units in an existing building and that therefore the intention of the moratorium for the Coolidge Corner IPOD would not cover this proposal. He also noted that by special permit, one-half of the required parking spaces could be waived, which would leave nine required and there are eleven provided. The Building Department has no objections to the proposed development and will ensure that all State Code provisions are satisfied.

Notwithstanding the foregoing concerns raised by the Planning Board, Attorney Allen stated that in his opinion, the restrictions limiting further development within the Coolidge Corner IPOD established under Section 3.03.6.1.h.1 relate only to new residential development. Mr. Allen noted that the Selectmen's report to Town Meeting supporting passage of the Coolidge Corner IPOD states in part that "[t]he proposed IPOD...limits *new* residential development to two units per lot by right, and up to five units by special permit." (Emphasis added). Mr. Allen thus asserted that contrary to the opinion of the Planning Board, a use variance would not be required

to construct the proposed three additional basement units within the existing residential building because the existing units should not be counted as part of the proposed development. Instead, the proposed development may be allowed by special permit, and is also subject to Coolidge Corner Design Guidelines. In any event, in response to concerns raised by the Board of Appeals about the suitability of the proposed studio apartment, the petitioner agreed to eliminate the proposed Unit-C, and according to Mr. Allen, thereby eliminating the need for special permit relief under Section 3.03.6.1.h. The Board reviewed the Selectmen's report to Town Meeting, and agreed with Mr. Allen's interpretation of Section 3.03.6.1.h.1, namely, that the requirement of a special permit to construct more than two but not more than five residential units relates to new development only. The Board further finds that by eliminating the proposed Unit-C, the applicant may proceed with the construction of the two remaining proposed units as of right.

The Board further deliberated on this matter, considered the foregoing testimony and concluded that it is desirable to grant the relief requested by this petitioner, subject to certain conditions.

The Board considered the visual relationships of the proposed basement units to the use, scale, and architecture of the surrounding community. The Board has considered whether the proposal creates harmonious visual relationships and the Board has determined that the relationship is, in general, harmonious. The Board further finds that the proposed development will not be more detrimental to the neighborhood than the existing conditions. The use as proposed to be developed and the site design are aesthetically pleasing. The proposed design is adequate and appropriate for the neighborhood. The proposed development will not have any substantial effect on the traffic, nor will it cause a nuisance or serious hazard to vehicles or

pedestrians. The building, driveways, walkways and open space are functional and are proper for the proposed use. The Board finds that the proposed use will not remove any existing low or moderate-income housing in the Town.

Accordingly, the Board makes the following findings pursuant to Sections 5.09 and 9.5:

1. The location, topography, vicinity and natural features of the site make it particularly suitable for the proposed addition and underground parking.
2. The use as proposed by the Petitioner will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The construction of two basement units, as proposed, will not have a significant adverse affect on the supply of housing available for low and moderate income people.
6. The proposal is comparable to adjacent uses in regards to massing and scaling and the relationship of building to the street edge.

Accordingly, the Board grants special permits for the construction of two basement units (Unit A and Unit B) pursuant to Sections 4.07, 5.05, 5.50, 5.60, 5.70, 6.01.2.a, and 6.02.1, subject to the following conditions:



1. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals Decision: 1) accurate and measured final building elevations and floor plans stamped by a registered architect and 2) evidence that the Board of Appeals Decision has been recorded at the Registry of Deeds.
2. Prior to obtaining a building permit, the applicant shall submit to the Assistant Director for Regulatory Planning for review and approval a parking plan prepared and signed by a registered professional engineer or land surveyor.

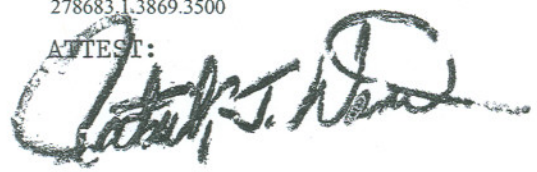
Unanimous Decision of  
The Board of Appeal

  
\_\_\_\_\_  
Harry Miller

Filing Date: November 22, 2006

A True Copy:  
278683.1.3869.3500

ATTEST:

  
\_\_\_\_\_  
Patrick J. Ward  
Board of Appeals